

[Cite as *State v. Cox*, 2023-Ohio-377.]

**COURT OF APPEALS OF OHIO**

**EIGHTH APPELLATE DISTRICT  
COUNTY OF CUYAHOGA**

STATE OF OHIO, :  
 :  
 Plaintiff-Appellee, :  
 : Nos. 111636, 111640,  
 v. : and 111651  
 :  
 BRIAN L. COX, JR., :  
 :  
 Defendant-Appellant. :

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JOURNAL ENTRY AND OPINION

**JUDGMENT: AFFIRMED**  
**RELEASED AND JOURNALIZED: February 9, 2023**

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Criminal Appeal from the Cuyahoga County Common Pleas Court  
Case Nos. CR-21-660012-A, CR-21-660090-A, CR-22-669956-A,  
DL-21-100138, DL-21-100881, and DL-21-111153

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***Appearances:***

Michael C. O'Malley, Cuyahoga County Prosecuting  
Attorney, and Sean Kilbane, Assistant Prosecuting  
Attorney, *for appellee*.

Timothy Young, Ohio Public Defender, and Lauren  
Hammersmith, Assistant State Public Defender, *for  
appellant*.

ANITA LASTER MAYS, A.J.:

{¶ 1} Defendant-appellant Brian L. Cox, Jr. (“Cox”) appeals the trial court’s judgment sentencing him to an indefinite prison term pursuant to the Reagan Tokes Law. After reviewing the facts of the case and pertinent law, we affirm.

{¶ 2} Cox was charged in three complaints in Cuyahoga County Juvenile Court.<sup>1</sup> After the court found probable cause in relation to all counts in each complaint, Cox’s cases were transferred to the general division of the common pleas court. Cox entered guilty pleas to one count of aggregated robbery in Cuyahoga C.P. No. CR-21-660012; two counts of aggravated robbery (with three-year firearm specifications), one count of robbery, and one count of aggravate burglary (with a three-year firearm specification) in Cuyahoga C.P. No. CR-21-660090; and one count of robbery in Cuyahoga C.P. No. CR-22-669956. Cox agreed to a recommended sentence with a range of 14 to 18 years. The trial court sentenced Cox to an aggregate prison sentence of 14 to 16.5 years, subject to the Reagan Tokes Law indefinite sentencing scheme.

{¶ 3} Cox’s trial counsel objected to the imposition of the Reagan Tokes Law citing that it was unconstitutional. Cox filed this appeal and assigned one error for our review:

The Reagan Tokes Law violates the Ohio and U.S. Constitutions, Cox’s sentence is contrary to law. R.C. 2953.08(G)(2); Sixth and Fourteenth Amendments of the U.S. Constitution; Articles I, II, and III of the U.S.

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<sup>1</sup> Cox’s three juvenile cases were DL-21-100138, DL-21-100881, and DL-21-111153.

Constitution; and Article I, Sections 5, 10, and 16 of the Ohio Constitution.

## **I. Law and Analysis**

{¶ 4} In Cox's sole assigned error, he argues that his sentence violates the separation-of-powers doctrine and does not satisfy the requirements of due process, and thereby violates his constitutional rights.

{¶ 5} Cox's assignment of error is overruled pursuant to this court's en banc decision in *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.).

{¶ 6} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

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ANITA LASTER MAYS, ADMINISTRATIVE JUDGE

FRANK DANIEL CELEBREZZE, III, J., and  
MARY EILEEN KILBANE, J., CONCUR

N.B. Administrative Judge Anita Laster Mays is constrained to apply *Delvallie's* en banc decision. For a full explanation of her analysis, see *State v. Delvallie*, 2022-Ohio-470, 185 N.E.3d 536 (8th Dist.) (Laster Mays, J., concurring in part and dissenting in part).

Judge Mary Eileen Kilbane joined the dissenting opinion by Judge Lisa B. Forbes and the concurring in part and dissenting in part opinion by Administrative Judge Anita Laster Mays in *Delvallie* and would have found the Reagan Tokes Law unconstitutional.